

REMARKS

This is a full and timely response to the outstanding non-final Office action of January 27, 2005 (Paper No/Mail Date 20050107). The Examiner has required the Applicant to elect to prosecute one of two groups of claims identified in the Office Action. It should be mentioned that on February 17, 2005, Examiner and Applicant's attorney, Minh N. Nguyen, discussed on the telephone the restriction requirement. During the discussion, Group I, corresponding to claims 1-26, was elected to be prosecuted with traverse. The Applicant confirms that the claims of Group I are elected to be prosecuted with traverse, as set out hereafter, in response to the restriction requirement.

First, in the interest of equity and fairness, the Applicant should be entitled to pursue different types of claims in the present application, particularly, apparatus claims and method claims, for the invention to fully protect the invention, because there is a different body of law pertaining to each of these different types of claims. The restriction requirement is therefore unfair to the Applicant, because it will require the Applicant to file and bear the additional cost and time delay associated with filing one or more divisional or continuing applications in order to cover each type of claim set.

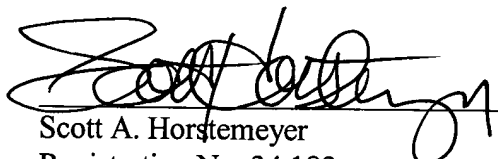
Second, as provided in 35 U.S.C. § 121, restriction to one of two or more claimed inventions is proper only if the inventions are "independent and distinct." In its discussion of the propriety of restrictions, MPEP § 803 further provides that if search and examination of two or more inventions can be made without "serious burden," the Examiner must examine them on the merits even if the claims are directed to distinct or independent inventions.

In the present case, Groups I and II, although not necessarily obvious in view of each other, are very similar in subject matter. More specifically, each pertains to nail gun that is used

to drive the screw to a workpiece. For this reason, the Applicant respectfully submits that the inventions described in these claims are not “ independent” as defined in MPEP § 803 and that the restriction requirement therefore is improper as between Groups I and II. Indeed, it appears that a search for apparatus and method would be conducted within the *same class*. In such a situation, it clearly would not be overly burdensome on the Examiner to check for both of these “ separate” inventions at the same time.

For at least the foregoing reasons, the Applicant respectfully traverses the restriction requirement and respectfully requests the Examiner to examine the claims of Groups I and II together. The Applicant expressly reserves the right to present the non-elected claims, or variants thereof, in continuing applications to be filed subsequent to the present application. Should the Examiner have any questions regarding this response, the Examiner is invited to telephone the undersigned attorney.

Respectfully submitted,



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